

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RULE 44 (c) HEARING

BEFORE THE HONORABLE M. PAGE KELLEY
UNITED STATES MAGISTRATE JUDGE

United States District Court
1 Courthouse Way, Courtroom 1
Boston, Massachusetts 02210
August 27, 2019, 3:00 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617) 345-6787

1 A P P E A R A N C E S:

2 ERIC A. ROSEN, ESQ., JUSTIN D. O'CONNELL, ESQ.,
KRISTEN A. KEARNEY, ESQ., and LESLIE WRIGHT, ESQ.,
3 Assistant United States Attorneys, Office of the United States
Attorney, 1 Courthouse Way, Room 9200, Boston, Massachusetts,
4 02210, for the Plaintiff.

5 SEAN M. BERKOWITZ, ESQ., Latham & Watkins LLP,
330 North Wabash Avenue, Suite 2800, Chicago, Illinois, 60611,
6 for the Defendants.

7 WILLIAM J. TRACH, ESQ., Latham & Watkins LLP,
John Hancock Tower, 27th Floor, 200 Clarendon Street, Boston,
8 Massachusetts, 02116, for the Defendants.

9 GEORGE W. VIEN, ESQ., Donnelly, Conroy & Watkins LLP,
10 260 Franklin Street, Boston, Massachusetts, 02110, for the
Defendant, Mossimo Giannulli.

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PROCEDINGS

2 THE CLERK: You may be seated. Today is Tuesday
3 August 27, 2019. We're on the record in Criminal Case
4 No. 19-10080, the United States of America v. Mossimo Giannulli
5 and Lori Loughlin, the Honorable M. Page Kelley presiding.
6 Will counsel please identify themselves for the record.

7 MR. ROSEN: Good afternoon, your Honor. For the
8 government, Eric Rosen, Justin O'Connell, Kristen Kearney, and
9 Leslie Wright.

10 THE COURT: Good afternoon.

11 MR. O'CONNELL: Good afternoon.

12 THE COURT: Counsel?

13 MR. VIEN: Good afternoon, your Honor. George Vien
14 for Mossimo Giannulli.

15 THE COURT: Okay.

16 MR. TRACH: Good afternoon, your Honor. William Trach
17 for Mossimo Giannulli and Lori Loughlin.

18 | THE COURT: Good afternoon.

19 MR. BERKOWITZ: Good afternoon, your Honor. Sean
20 Berkowitz on behalf of Mossimo Giannulli and Lori Loughlin, who
21 are present in court.

22 THE COURT: Okay, and good afternoon to you. So I'm
23 going to talk for a while, and then I'm going to ask to hear
24 from the lawyers, and so I will not ask either of you any
25 questions for a while. I'm going to have you sworn in at some

1 point, and then eventually I'm going to ask you a series of
2 questions about your waiver.

3 So at the outset of the hearing, I'd like to caution
4 the parties that the microphones in front of you are live, and
5 that there is an overflow courtroom set up today, and I've
6 heard that even if you're speaking softly at counsel table, the
7 mic will pick up your voice and play it fairly loudly in the
8 overflow room. So if you want to speak, there is a button at
9 the back of the microphone, and you can press it and the light
10 should go from red to green, and then you won't be heard. Or
11 you could always just ask to take a short break, and I'll give
12 you a chance to talk to each other, okay, at any time during
13 the hearing.

14 DEFENDANT LOUGHLIN: Thank you.

15 THE COURT: So, Ms. Loughlin and Mr. Giannulli, we're
16 having this hearing because it has been brought to my attention
17 that the attorneys you retained to represent you have a
18 potential, and I think even actual, conflict of interest, so
19 I'm required to have a colloquy with you by law and to hear
20 from your lawyers as well to make sure that you understand the
21 risks that you're facing, that you've discussed the risks with
22 your lawyers, and that you understand you have the right to
23 retain lawyers who only represent you and not other defendants
24 in the case; and at the end of the hearing, I'll ask you a
25 series of questions about whether you waive the conflict.

1 So a person who is charged with a crime absolutely has
2 a right to hire a lawyer of their own choosing, but that also
3 conflicts with another important legal principle; that if
4 you're charged with a crime, you ought to have a lawyer who has
5 undivided loyalty to you alone. And so the reason we have this
6 hearing is that there really is a bedrock principle in our
7 system of justice that when a person is charged with a crime,
8 their lawyers should have undivided loyalty to them and put
9 them first in everything. And when a lawyer takes on the
10 representation of a client, they owe that person a duty of
11 loyalty and a duty of confidentiality. And the reason the
12 Rules of Professional Conduct protect this relationship is that
13 people must have good legal advice all through the proceedings
14 so that they can have a fair trial, and the only way you know
15 you're getting the best legal advice you can is if you have an
16 attorney who has undivided loyalty to you and you alone.

17 The duty of loyalty and confidentiality continues even
18 if the lawyer stops representing a client. So, in other words,
19 if a conflict arose between you and another client that your
20 lawyer represented, the lawyer cannot really just pick one
21 person and go on with the representation because the attorney
22 still has a duty of loyalty and confidentiality to the other
23 client.

24 So I also want to say by way of explanation that under
25 the law and according to the Rules of Professional Conduct, if

1 attorneys are in the same firm, they are considered to be the
2 same lawyer. In other words, attorneys from the same firm are
3 not generally allowed to represent clients who have conflicts
4 of interest, and firms typically go to great lengths to avoid
5 that situation. And so in this colloquy, when I say "counsel,"
6 I'm really referring to a firm and not just a single lawyer.

7 So I also want to say -- and I'm only going to say
8 this once, but it's very, very important -- no one can know
9 what problems may arise in the future because of a conflict.
10 I'm going to go over some potential issues, but no one can say
11 that they know now everything that will happen down the road.

12 It sometimes happens that when an attorney has a
13 conflict of interest and when the case is over, the client will
14 attempt to raise an issue on appeal saying, "I didn't get a
15 fair trial because my lawyer had a conflict of interest and
16 they didn't adequately represent me." If you waive your
17 conflict today, I want you to understand that you will have a
18 very hard time raising such an issue on appeal because this
19 waiver hearing will effectively act as a barrier to you raising
20 such an issue as that. So if you waive your conflict, you will
21 in effect be saying, "I don't care what prejudice, even
22 unknown, that I might suffer in the future; I still decided to
23 take that risk."

24 So, of course, if you waive the conflict today, you
25 can always change your mind. And in the future, if you think

1 you need a lawyer who only represents you, then you can
2 obviously hire another lawyer. But I will tell you that, first
3 of all, the lawyer with the conflict will still owe a duty to
4 you and to someone else. And, also, the District Judge is not
5 obligated to continue the case to let a new lawyer get up to
6 speed, and I'm not obligated to slow down the progress of the
7 case either. So you may in the future find yourself in a bind
8 with regard to timing if you switch lawyers.

9 So I'm going to ask the attorneys now to speak, and I
10 think I'll ask the government to go first and outline their
11 position.

12 MR. ROSEN: Judge, the way the government sees the
13 issues now, that there are really two issues for the Court to
14 deal with: The first is the dual representation of
15 Defendant Loughlin and Defendant Giannulli, and the second is
16 the representation by Donnelly, Conroy & Gelhaar of at least
17 three defendants and one other connected individual to the
18 case, the most important issue here being the dual
19 representation of both Mr. Giannulli and Ms. Davina Isackson,
20 who has already pled guilty and is cooperating with the
21 government against Ms. Loughlin, Mr. Giannulli, and others.

22 The USC issue I think has, as I relayed to your Clerk
23 I think last week, I think has sort of resolved itself. It's
24 now on the sort of former client track because of the
25 defendants' filing, and I don't see any major issues with that,

1 just because there really were two very separate essentially
2 unrelated matters which I think would sort of moot any actual
3 or future client that I see.

4 The issue of dual representation of the two defendants
5 is obviously something we've dealt with before involving, you
6 know, other sort of husband and wife charged defendants. It is
7 a waivable conflict to some degree. I mean, there is a
8 concurrent conflict of interest where there's a significant
9 risk that the representation of one or more clients will be
10 materially limited by the lawyer's responsibility to another
11 client.

12 Now, in this case involving the defendants, I do think
13 the evidence here is a little bit more challenging than some of
14 the other husband and wife defendants that we've dealt with.
15 Now, the reason for that is, I don't think there's any
16 dispute -- well, there's going to be a dispute, but let me just
17 talk a little bit about what the government's allegations and
18 what the evidence I have reviewed thus far indicates.

19 I do think both the defendants obviously knew,
20 according to what emails and phone calls we've received, that
21 their daughters would be designated as recruited coxswains for
22 the crew team in exchange for payments, both directly and
23 indirectly, to USC employees or designated accounts of USC
24 employees, and also that they did not play the sport for which
25 they were recruited. There are emails to that effect beginning

1 in the spring of 2016. But importantly, especially for this
2 case, there are issues and there's evidence that indicates that
3 they were involved in also separate events that could raise a
4 potential conflict, which would impact the ability of their
5 lawyers to successfully navigate it for one or both of the
6 defendants. And I'll just give an example. In April of 2018,
7 there is an incident at the high school of the older daughter
8 where, by the evidence as shown, the allegations are that after
9 she was admitted as a recruited coxswain, it came to light,
10 according to the high school, that they had no, obviously,
11 involvement in the sport, and that there was a confrontation
12 between the guidance counselor and Mr. Giannulli.

13 Now, it appears, at least from the evidence, that
14 portions of that were relayed to Ms. Loughlin as well, but the
15 problem is that that's going to be obviously an important event
16 or an event in the government's presentation of the case; and,
17 you know, if they had separate counsel that weren't
18 representing both, there would obviously be some finger
19 pointing as to who was involved and what people's knowledge of
20 the events actually was. You couldn't do that if you were
21 represented by both people.

22 There's also issues involving just essentially who was
23 making the payments to Mr. Singer, whether they were involved
24 with other people, and, you know, there are obviously emails
25 that one of them was on while the other was not on. So I do

1 believe that there are obviously limitations to the sort of
2 united front defense that they do wish to present; but
3 probably, looking through all the evidence, it probably is a
4 waivable conflict, but it obviously is better brought to the
5 Court's attention at this stage rather than waiting until
6 trial.

7 The representation by Mr. Vien of Mr. Giannulli is a
8 little bit different, and it calls into a question we've been
9 dealing with sort of throughout this case. It requires a
10 little bit of an explanation as to the parties' involvement.
11 Defendant Davina Isackson's daughter was admitted to USC as a
12 fake rower in exchange for a bribe payment. She has pled
13 guilty, is cooperating, and has acknowledged participating in a
14 wide-ranging conspiracy together with other parents. She is
15 represented by Mr. Peter Gelhaar of Donnelly, Conroy & Gelhaar.
16 And, you know, I bring in the lawyers' names, and I have the
17 utmost respect for all the lawyers involved in this case. I
18 simply believe it's best to bring it to the Court's attention
19 so that everything is with sunlight.

20 Defendant Mr. Giannulli's daughter was admitted to
21 USC, the allegations show, as a fake coxswain, part of the crew
22 team, in exchange for a bribe payment. He has pled not guilty.
23 He is represented by George Vien of the same law firm, which is
24 an eleven-member law firm. Thus, we have the same school
25 that's involved, the same sport, and one client is cooperating

1 against the other client. As I've said in previous proceedings,
2 I have not seen a court that's really sanctioned this dual
3 representation of this nature. I'm talking specifically about
4 the *Daugerda*s case that I brought up in prior proceedings,
5 *United States v. Daugerda*s. That's D-a-u-g-e-r-d-a-s. That's
6 75 F. Supplement 2d from the Southern District of New York
7 involving the Sonnenschein law firm. A firm owes a duty of
8 loyalty obviously to all its clients, and simply counseling
9 Ms. Isackson to provide and cooperate and tell the truth at
10 trial will necessarily harm Mr. Giannulli's defense because
11 they are cooperating one against the other.

12 It also raises an issue of juror confusion where the
13 jury might be confused as to why the same firm is representing
14 both a cooperator and a defendant, and it also raises issues of
15 fundamental fairness where a wealthy defendant can simply
16 purchase access to a cooperator by hiring their attorney, as
17 well as the integrity of the proceedings.

18 It could be that in some large, multi-office firms, as
19 we've gone through in this case, like the case of Boies
20 Schiller, an ethical wall could save the representation and
21 make it consentable; but here we're talking about an
22 eleven-person law firm with a single office that now represents
23 three defendants, including a cooperator and a person also
24 involved in the case. The government in their papers pointed
25 out two cases from the Southern District of New York, one

1 involving a thirteen-person firm and one involving an
2 eleven-person firm where such dual representation was not
3 approved. It's just very difficult to see how an eleven-person
4 firm could properly maintain an ethical wall with two
5 defendants, given that such firms share office space, printers,
6 computer networks. Let alone with three defendants here and
7 another individual, I don't really see how it could work.

8 Notably, the ethical wall here that they describe in
9 the affidavit of Mr. Vien was only erected after April 17 of
10 2019, which was when Mr. Giannulli retained Mr. Vien. At that
11 point the firm had already been representing Ms. Isackson as
12 well as Mr. Sartorio. The firm simply had learned confidential
13 information about those individuals, and it's difficult to see,
14 given the circumstances of the size of the firm and the office,
15 how they could then unlearn that for purposes of the
16 proceeding.

17 THE COURT: Can you just elaborate on -- I presume
18 Ms. Isackson doesn't know Mr. Giannulli.

19 MR. ROSEN: I don't believe they know each other, your
20 Honor.

21 THE COURT: So assuming they don't know each other,
22 can you just explain what type of evidence she might be able to
23 give against him.

24 MR. ROSEN: Absolutely. They're both very similarly
25 situated individuals who both did the, quote/unquote,

1 "side door" Mr. Singer offered into USC through Donna Heinel.
2 They would describe what Mr. Singer told them about the side
3 door, whether they knew other individuals were participating in
4 it. They would discuss the creation of the fake profiles in
5 the sport that was used. In essence we would say, and we've
6 done this in numerous other cases, that a similarly situated
7 person, this is what they knew, this is what they learned, and
8 this is how they knew it; and we'd impute that, you know, ask a
9 jury to make that same imputation to Mr. Giannulli. And they
10 also used, I believe, the same person to create the fake
11 profile created for both people as well, and she too is
12 cooperating with the government.

13 THE COURT: Okay. And anything to say about
14 Mr. Sartorio's representation?

15 MR. ROSEN: He's pled guilty, and I don't think it
16 presents much of a problem. He's pled guilty. He's getting
17 sentenced fairly soon. And he did the SAT cheating as opposed
18 to the fake sport thing, so I don't believe that will be a big
19 problem. The main thrust is the conflicts between Ms. Isackson
20 and Mr. Giannulli.

21 THE COURT: Okay, so you don't see a problem with USC
22 or Mr. Sartorio, nor any major problem with the Giannullis,
23 with this married couple having the same lawyer, but your main
24 concern is with the representation by Mr. Vien and Mr. Gelhaar?

25 MR. ROSEN: Well, it's not that I don't see a concern

1 with the dual representation of both Ms. Loughlin and
2 Mr. Giannulli. It's just that I think, in this instance, it's
3 probably most likely waivable. I think the decision that they
4 make is their decision as to how they want to present the
5 defense. It's not my decision. I do see a concern, but it's a
6 waivable category.

7 I do think the other category, the dual representation
8 of the Isackson, who has not yet, at least formally in a Foster
9 hearing, waived the conflict, although they say it in the
10 papers that she intends to waive, and Mr. Giannulli in my mind
11 is far more troubling.

12 THE COURT: Okay, thank you.

13 So I'd like to hear from defense counsel, and I'd like
14 defense counsel to explain what steps have been taken to
15 mitigate any conflict of interest that has arisen or may arise,
16 and what steps have been taken to comply with Rule 1.7 of the
17 Rules of Professional Conduct, which requires that each
18 affected client must give informed consent in writing. So in
19 whatever order you wish.

20 MR. VIEN: Your Honor, I think my representation seems
21 to be more troubling to the government, so why don't I start.

22 First, this is a waivable actual or potential
23 conflict, as evidenced by the cases that the government cites
24 in their brief, *Stein* and *Uzzi*. And in fact in *Stein*, the
25 court found that the defendants, the clients properly waived

1 any conflict and allowed the representation to continue.

2 I just wanted to point out in the beginning that as
3 your question focused on, Ms. Isackson, as I understand, has
4 never met my client, Mr. Giannulli, and has no idea who he is
5 other than the press reports once this case came about.

6 Now, what happened, as my declaration states, is that
7 prior to getting involved in the case, I went to Mr. Gelhaar
8 because I had heard he represented Ms. Isackson, and I said,
9 "Is there any ethical problem with me representing
10 Mr. Giannulli?" And he told me "no," he didn't see one at all,
11 and that his client, as far as he understood, didn't even know
12 Mr. Giannulli. Despite that, your Honor, we put in place I
13 think very robust protections against any cross-pollenization
14 of information.

15 What we did is, first, as I say in my declaration, if
16 the case goes to trial and if the government actually calls
17 Ms. Isackson as a witness, which, frankly, I kind of doubt
18 because I think imputing her criminal consciousness onto
19 another defendant would be wildly improper, but let's say we do
20 go forward and let's say they do call her, first, as I stated
21 in my declaration, I will not cross-examine Ms. Isackson; and
22 the Latham attorneys obviously are more than capable of
23 cross-examining Ms. Isackson, who, as I said, knows nothing
24 about our client, and our client is obviously jointly
25 represented by myself and Latham.

1 In addition to that, we put rules in place so that we
2 didn't discuss the cases, even the public information related
3 to the cases. And unlike in some of the cases that are
4 problematic, we talked to our computer vendor and segregated
5 the electronic files, and we've obviously segregated physical
6 files, so that I cannot access any files relating to
7 Mr. Gelhaar's client, and Mr. Gelhaar cannot access any files
8 relating to my client, and that goes for paralegals and other
9 attorneys who are working on the case. So we've put in a
10 robust firewall. And I know the government keeps coming back
11 to the point that we are a relatively small law firm, but
12 obviously the very cases cited by the government say that
13 that's a consideration but not controlling on this.

14 In addition, as you pointed out by the Massachusetts
15 Rules of Professional Conduct, we have secured a written waiver
16 from Ms. Isackson, and she has waived my involvement in the
17 case. So Mr. Giannulli is ready to waive and has waived. We
18 put in robust protections within the office. I don't see what
19 evidence, admissible evidence Ms. Isackson would actually have
20 to offer against these defendants, and Ms. Isackson herself has
21 waived any potential conflict.

22 So since I think the government, by the cases they
23 cite, would agree that this is a waivable conflict, and both
24 clients have waived, and we've put in these robust protections,
25 I don't think, frankly, that the Court should disqualify our

1 law firm, and instead give Mr. Giannulli the attorneys of his
2 choice, which I think, when you read all the cases, is really
3 the default position.

4 So that's what we've done. I think it's clearly
5 waivable. The government agrees, and I think the Court -- I
6 say this respectfully, obviously -- that the Court should
7 accept the waivers and allow us to continue in the case.

8 Thank you.

9 THE COURT: Okay. Yes?

10 MR. TRACH: So, your Honor, I just want to address a
11 couple of the things that the government said as it relates
12 to -- I think the government said that the evidence may be more
13 challenging than some of the other joint husband and wife
14 representations. And, you know, first off, I think the first
15 thing that was said was that there is evidence that payments
16 were made to either USC employees, either directly or
17 indirectly. There's zero evidence in this case of that.
18 There's not even an allegation in this case of that, your
19 Honor. The evidence in this case is that there were checks
20 that were made out to USC Athletics and to a fund to build a
21 building at USC by our clients, and those checks were made and
22 sent to USC and cashed by USC in this case. And then there
23 were payments that were made to the Key Worldwide Foundation,
24 which was a 401(c)(3) set up by Mr. Singer that gave donations
25 out to schools, legitimate donations to schools across the

1 country. That's all that my clients are alleged to do, and
2 that's all that the evidence shows was done. So the idea that
3 there is evidence that our clients paid money to individual
4 employees at USC, there's no evidence of that.

5 And, really, at the end of the day, our clients, their
6 defense which we've discussed before, at least in part, is a
7 question of what it is that they knew about whatever Singer may
8 or may not have been doing with a scheme or with money at the
9 Key Worldwide Foundation or what he was doing with respect to
10 these employees, and I think, on that, my clients do have a
11 united front.

12 The incident that the government talked about with
13 respect to a guidance counselor, first off, that incident
14 happened after the girls were both already admitted into USC,
15 and it was a conversation between Mr. Giannulli and a guidance
16 counselor at their high school. Nobody who has been charged in
17 this case or who is alleged to have been involved in this case
18 was a part of that conversation. So the idea that that has
19 become some important event that differentiates our clients and
20 matters for the purpose of the joint representation issue, I
21 just think that can't be the case.

22 And, moreover, all of these issues have been discussed
23 at length with both of our clients. Unlike a lot of the other
24 people who have joint representation issues, both of our
25 clients have completely non-conflicted separate counsel who

1 they have engaged and who they have talked to about the risks
2 inherent in joint representation, and who are still engaged and
3 able -- at any time, each of our clients can individually talk
4 to non-Latham counsel with no conflicts whatsoever about
5 issues, and they are still retained, they are still part of a
6 team, and they're available to do that.

7 I think, with all of those protections, your Honor,
8 this is clearly a waivable conflict. The waivers of other
9 husbands and wives who have been charged in this case have been
10 accepted before. They have been fully apprised of the risks.
11 They have talked about the risks with independent counsel with
12 no conflicts whatsoever; and armed with all that information,
13 they have decided that they want Latham to represent them
14 jointly, and I think your Honor should accept their choice of
15 counsel and allow the continued joint representation.

16 THE COURT: Okay, thank you.

17 Yes, sir?

18 MR. BERKOWITZ: I have nothing to add to my partner's
19 comments, your Honor. We have discussed all of these with
20 Mr. Giannulli and Ms. Loughlin, and I echo Mr. Trach's
21 comments.

22 THE COURT: Okay. All right, so as we go forward in
23 the hearing, if at any time you don't understand anything or
24 you have a question, you can ask me. Or, if you want, we'll
25 take a break and you can consult with your counsel. Or if you

1 feel that something has come up during the hearing that you
2 want to ask a question about but you feel that it might
3 compromise your defense, or if for any other reason you want to
4 do this, we can have an ex parte hearing, which means that it
5 would just be your counsel and me. We would exclude the
6 government and the public, and we would have a hearing on the
7 record, but the record would be sealed. And if at any time you
8 feel that you would like to have such a hearing, I'm also happy
9 to do that. And if you wanted to take a short break at any
10 time and talk to your lawyers about that, that's fine too. And
11 we can also always continue the proceeding to another day,
12 although I'm sure you probably don't want to do that, but we
13 could continue it and resume it at another time if you wish.

14 So I'm going to ask you to stand up, and I'm going to
15 ask Ms. Belmont to swear you in, and then you can be seated
16 again. Thank you.

17 THE CLERK: Raise your right hand.

18 (Defendants Giannulli and Loughlin duly sworn.)

19 THE COURT: Okay, thank you. So I'm just going to go
20 over the risks involved in joint representation briefly, and
21 then we'll do the colloquy, okay.

22 So, first of all, there's a potential conflict
23 because, as has been discussed, Latham & Watkins represents
24 both of you; and even though you're married and it might seem
25 normal to have the same counsel, I'm glad that you have

1 separate counsel as well because I think two people should have
2 separate counsel typically. You need to have the undivided
3 loyalty of counsel. Your roles in the offense might be
4 different. You might have different defenses that come up.
5 You might have different sentencing issues, and there are very
6 serious risks inherent in being represented by an attorney who
7 represents another person in the same case.

8 Some examples of the risks include, your counsel may
9 not be able to conduct an independent investigation of the
10 facts on your behalf because that might mean he's investigating
11 the other person, or that he or she is looking for evidence
12 that might undermine something the other person told them
13 that's helpful to that person's defense. You may want to
14 testify, if you go to trial, but your lawyer might not want you
15 to, since your testimony might hurt the other person. Your
16 counsel may not be able to present evidence that's favorable to
17 you if it's harmful to the other person, or your counsel may
18 not be able to cross-examine witnesses fully if one line of
19 questioning might help or hurt the other person. The
20 attorney-client privilege may prevent counsel from telling you
21 something that the other person told him or her that either
22 helps or hurts your case. The government may want to offer
23 immunity or recommend a lesser sentence to one person for
24 cooperating; and if one of you gets an offer, your counsel may
25 not be able to fairly advise you whether to take it because it

1 could potentially harm the other person. The government may
2 let a person plead guilty to lesser charges than the other
3 person but may require the first person to testify, and counsel
4 who represents more than one defendant might recommend the
5 first person not do that in order to protect the other person.

6 The best defense for a person often is the argument
7 that other people are guilty but that person is not, and a
8 lawyer who represents more than one defendant may not be able
9 to effectively make such an argument. If sentencing becomes an
10 issue, then dual representation may prohibit a lawyer from
11 engaging in negotiations with the government as to full
12 disclosure by one defendant against the other, and it can also
13 prohibit the lawyer from arguing the relative culpability. So
14 often at sentencing lawyers will attempt to rank all the
15 defendants in a case in order of culpability and say, "Here's
16 where my client falls in there," and if you have multiple
17 clients, it's very hard to do that without hurting one of your
18 clients.

19 And, as I mentioned earlier, another pitfall of having
20 counsel who represents more than one person is that even if
21 your attorneys were to stop representing one of you in the
22 future, their ongoing ethical responsibilities could still
23 hamper the defense of the person who stays.

24 So with regard to, Mr. Giannulli, your representation
25 by Donnelly, Conroy & Gelhaar, the firm that also represents

1 Davina Isackson, this is typically considered to be the most
2 serious potential conflict; and, if you read the cases, this is
3 a situation in which judges most often remove lawyers from
4 cases if they're representing a person who is cooperating
5 against another person.

6 So the defense lawyers in this entire case seem to be
7 arguing -- your lawyer is not the first -- that just because a
8 cooperator doesn't know the other defendant and doesn't have
9 firsthand knowledge of that defendant's alleged crime, they
10 can't really be a witness against that person. But you should
11 know that the government has a different view of this. And you
12 are charged in a conspiracy, and in a conspiracy, you don't
13 have to know the other people in the conspiracy.

14 Now, there's a dispute about whether you're even in
15 the same conspiracy, but that hasn't been decided yet. That is
16 still to be decided, and it may even be that it is not decided
17 until at the trial. So in that case, the government may use
18 Ms. Isackson to establish that there was this conspiracy, of
19 which she was a part and you were a part, to commit the same
20 crime in the same way with the same people. And so she may be
21 testifying not exactly about precisely what you did, but she
22 would be a witness against you at trial. And the fact that the
23 lawyers in this eleven-person firm have erected a firewall and
24 have taken what seems to be pretty good steps to protect you
25 and Ms. Isackson from tainting each other's cases, that's

1 great. No one can tell you now whether that's foolproof, and
2 whether in fact lawyers who are in business together and
3 working together on many things -- and they're partners,
4 right? -- they're working closely together -- will actually be
5 able to go at each other and attack each other's clients in a
6 way that is really beneficial to you. So that's a risk that
7 you're taking. And I certainly, as the government said, I'm
8 not impugning the integrity or the intentions of any of your
9 lawyers, but it is a serious risk. And I'm glad they've taken
10 the steps that they have, but you may well find yourself
11 disadvantaged somewhere down the road, not deliberately by your
12 lawyers but just by the fact there is this risky situation that
13 is in place.

14 And with regard to Peter Sartorio who's already pled
15 guilty, I agree with the government. I don't think that's a
16 huge risk, although, again, you don't know what will happen
17 down the road. For example, there is at least the legal
18 principle that after someone pleads guilty and is sentenced,
19 they don't have a Fifth Amendment privilege anymore, and they
20 could be called as a witness. So I don't know if this person
21 is cooperating or will want to cooperate, but there's always
22 the potential that something could come up, and this person
23 could come back to hurt you in some way. So that's also a
24 risk.

25 And for both of you, Latham & Watkins formerly

1 represented USC. And the government says they don't consider
2 this to be a huge conflict, but I can tell you that there are
3 things brewing in the case where it may well be that USC is
4 opposed to some of the defendants in the case, and you may want
5 to ask your lawyers about that. They do still have a duty of
6 loyalty toward USC, even though USC is no longer their client.
7 And, I mean, I don't know what all the ins and outs of that are
8 with regard to your defense, but that's something you really
9 need to discuss with your attorneys. You know, USC is alleged
10 to be the victim of the scheme here.

11 So would you like to take a short break and just speak
12 to your lawyers?

13 DEFENDANT GIANNULLI: No, thank you.

14 DEFENDANT LOUGHLIN: No. I'm fine.

15 THE COURT: Okay, all right. So I'm going to ask you
16 each -- you can remain seated, and I'll just ask you questions,
17 and then allow you both to answer them, and we'll just go
18 through them now. And then after I leave the bench, you can
19 sign a waiver. You can take your time. If you don't wish to
20 sign it on the spot, your lawyers will provide it, and you can
21 sign it later. Okay?

22 So have either of you taken any drugs, medicine, a
23 substance of any kind or alcoholic beverage, or do you have any
24 mental health issues that might prevent you from understanding
25 what is happening here?

1 DEFENDANT GIANNULLI: No, no.

2 DEFENDANT LOUGHLIN: No.

3 THE COURT: And is there any reason you'd like to take
4 a break or continue the hearing?

5 DEFENDANT LOUGHLIN: We can continue.

6 DEFENDANT GIANNULLI: Continue, please.

7 MR. BERKOWITZ: Your Honor, I think they assume what
8 you're asking is, do you want to continue to go on or --

9 THE COURT: Yes, we'll continue to go on. So pardon
10 me. "Continue" has a special meaning to all the lawyers.

11 Okay, do you understand that you have an absolute
12 right to retain separate counsel?

13 DEFENDANT LOUGHLIN: Can you say that again.

14 THE COURT: Do you understand that you have an
15 absolute right to retain counsel who is not conflicted in the
16 case?

17 DEFENDANT LOUGHLIN: Yes.

18 DEFENDANT GIANNULLI: Yes.

19 THE COURT: And would you like to consult with counsel
20 before you make a decision today, either your present counsel
21 or a different counsel?

22 DEFENDANT LOUGHLIN: No.

23 DEFENDANT GIANNULLI: No.

24 THE COURT: And do you feel that you understand the
25 risks involved in dual representation?

1 DEFENDANT LOUGHLIN: Yes.

2 DEFENDANT GIANNULLI: Yes.

3 THE COURT: And have you discussed this matter with
4 your lawyers?

5 DEFENDANT LOUGHLIN: Yes.

6 DEFENDANT GIANNULLI: Yes.

7 THE COURT: And would you like to have a private
8 conversation with me and your counsel about these issues?

9 DEFENDANT LOUGHLIN: No.

10 DEFENDANT GIANNULLI: No.

11 THE COURT: So in view of these risks and in view of
12 the right to have an attorney who only represents you, do you
13 still wish to be represented by present counsel?

14 DEFENDANT LOUGHLIN: Yes.

15 DEFENDANT GIANNULLI: Yes.

16 THE COURT: Okay. So do counsel have any
17 reservations? And I think everyone has said they've explained
18 to their clients the potential for conflicts, so any
19 reservations or anything else you want me to ask?

20 MR. TRACH: No, your Honor.

21 MR. ROSEN: Nothing from the government.

22 THE COURT: Okay, all right. So that concludes the
23 hearing. And now there is a written waiver form, and
24 Ms. Belmont will give that to you.

25 Anything else from anyone?

1 MR. ROSEN: Just to be clear, are you, your Honor, as
2 at previous hearings, are you reserving on the issues that
3 we've discussed, or are we --

4 THE COURT: Okay, I am happy to allow the waiver, but
5 I'm going to take under advisement the Isackson issue. I just
6 want to further read the cases. I'm inclined to allow the
7 waiver with regard to Ms. Isackson, but I'm just going to
8 review that, and I'll issue an order in a few days. Okay?

9 MR. ROSEN: Thank you.

10 THE COURT: All right, thank you.

11 THE CLERK: Court is in recess.

12 (Adjourned, 3:42 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 28 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 19-10080-NMG,
United States of America v. Mossimo Giannulli and Lori
Loughlin, and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

14 Dated this 29th day of August, 2019.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER